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IN THE HIGH COURT OF CHHATTISGARH

AT BILASPUR

WRIT PETITION No. 2098/2002

PETITIONER : Navdeep Industries,
Regd Office : Bassi Road,
Sirhind, Distt. Fatehgarh Sahib,
(Punjab) 140406.
Through : Manager,
Navdeep Industries,
Bassi Road, Sirhind 140406

P. R. No. 2183/02
Presented by Shri V.K. Tripathi
dated 09/10/02

VERSUS

RESPONDENTS : 1. State of Chhattisgarh
Through : Principle Secretary
Law and Legislative Department,
Govt. of Chhattisgarh,
Mantralay, D. K. Bhawan,
Raipur (C.G.).

2. South Eastern Coalfields Ltd.
Through : Chairman cum Managing
Director, South Eastern
Coalfields Limited,
Seepat Road, Bilaspur (C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

1. Particulars of the Petitioner

As mentioned in the cause Title.

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HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR.

(Division Bench)

CORAM : **HON'BLE SHRI A.K. PATNAIK, C.J.**
& HON'BLE SHRI V.K. SHRIVASTAVA, J.

WRIT PETITION NO. 2098 OF 2002

Navdeep Industries
- Versus-

State of Chhattisgarh & others

Present : Petitioner by Mr. V.G. Tamaskar, Advocate.

Respondent No.1 / State by Mr. N.K. Agrawal, Dy. Advocate General with Mr. Ashish Shukla, Govt. Advocate.

Respondent No.2 by Mr. R.R. Sinha, Advocate.

ORDER

(29th March 2005).

The following order of the Court was passed by **A.K. Patnaik, C.J.:**

The petitioner is a Small Scale Industry registered with Directorate of Industries, Punjab, and manufactures engineering items including drill rods in the State of Punjab and has been supplying such drill rods to South Eastern Coalfields/respondent No.2 in Madhya Pradesh, now Chhattisgarh, since 1972. The case of the petitioner in the writ petition is that no entry tax was payable on such entry of drill rods into the State of Chhattisgarh under the Chhattisgarh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 (for short "the Act, 1976"). But by the Chhattisgarh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar (Sanshodhan) Adhiniyam, 2002, the Act 1976 was amended so as to include "drill rod" in Schedule III of the Act 1976. As a consequence, entry of drill rod manufactured outside the State of Chhattisgarh has become liable to entry tax @ 10% on taxable quantum. The petitioner has prayed for declaring the said amendment in so far as it includes "drill rod" in Schedule III of the Act 1976 as ultra vires the Constitution.

(2) Mr. V.G. Tamaskar, learned counsel for the petitioner submitted that while entry tax is payable on drill rods manufactured by the petitioner outside the State of Chhattisgarh and supplied to respondent No.2 in the

State of Chhattisgarh, no such entry tax is payable on drill rods manufactured by a local industry located at Korba in the State of Chhattisgarh. He submitted that the impugned amendment is, therefore, discriminatory and violative of Article 304 (a) of the Constitution of India which prohibits the legislature of a State to discriminate between the goods imported and goods manufactured inside the State while imposing taxes. In support of this contention, he cited the decision of the Supreme Court in the case of **Shree Mahavir Oil Mills and Another Vs. State of Jammu & Kashmir and others,** reported in **(1996) 11 Supreme Court Cases-39** in which the Supreme Court has held that exemption from tax under the Jammu & Kashmir General Sales Tax, 1962 on edible oil produced and sold within the State of Jammu & Kashmir when such edible oil produced outside the State of Jammu and Kashmir was liable to tax under the said Act was discriminatory and violative of Article 304 (a) of the Constitution of India.

(3) Mr. N.K. Agrawal, learned Dy. Advocate General for the State of Chhattisgarh,on the other hand,relying on the averments in paragraph 8 of the return filed by respondent, submitted that drill rods produced by the local industry namely Mining Machine Tools in Korba may not be liable for entry tax when the drill rods produced by it are consumed and used in the local area of Korba; but will be liable to entry tax if the drill rods produced by it are consumed and used in local area of Bilaspur to South Eastern Coalfields Ltd. He submitted that the contention that the local industry at Korba namely Mining Machine Tools is not liable for entry tax on drill rods supplied to South Eastern Coalfields Ltd. in Chhattisgarh is, therefore, factually not correct. In support of the aforesaid submission, he relied on the provisions of the Act 1976.

(4) Clauses (d) and (e) of Section 2 and the relevant portion of Section 3 of the Act 1976 are quoted hereunder:

> "2. **Definitions.**- (1) In this Act unless the context otherwise requires, -
> (d) '**local area**' means the area comprised within the limits of a local authority;
> (e) '**local authority**' means as authority constituted under a law relating to local authority but shall not include a

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Janapada Panchayat, a Zila Panchayat, a Mandal Panchayat or such other local authority as the State Government may, notification, specify;

3. **Incidence of taxation.**- (1) There shall be levied an entry tax, -

(a) on the entry in the course of business of a dealer of goods specified in Schedule II, into each local area for consumption, use or sale therein; and

(b) on the entry in the course of business of a dealer of goods specified in Schedule III, into each local area for consumption or use of such goods but not for sale therein;

and such tax shall be paid by every dealer liable to tax under the Vanijyik Kar Adhiniyam, who has effected entry of such goods;

(5) It will be clear on plain reading of Section 3 (1)(b) of the Act 1976 that entry tax is to be levied on the entry in the course of business of a dealer of goods specified in Schedule III, into each "local area" for consumption or use of such goods but not for sale therein. The expression "local area" has been defined in Section 2 (d) of the Act 1976 to mean the area comprised within the limits of a local authority and the expression "local authority" has been defined in Section 2 (e) of the Act 1976 to mean the authority constituted under a law relating to local authority. The result is that on the entry in the course of business of a dealer of goods specified in Schedule III into each local area for consumption or use of such goods but not for sale therein, such goods will be liable to entry tax under Section 3 (1) (b) of the Act 1976. Hence, the contention of Mr. V.G. Tamaskar, learned counsel for the petitioner that the goods manufactured in the State of Chhattisgarh would not be liable to entry tax under Section 3 (1) (b) of the Act, is not correct. The goods manufactured and supplied within the same local area for consumption or use, are not liable for entry tax under Section 3 (1) (b) of the Act 1976, but if such goods manufactured in one local area, comes within another local area for use or consumption therein, they would be liable for entry tax under Section 3 (1) (b) of the Act 1976. This would mean that the goods manufactured in the local area of Korba would be liable for entry tax

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if it enters into the local area other than the local area of Korba. This being the provision of the Act 1976, there is no discrimination in including the drill rods in Schedule III of the Act 1976 by the impugned amendment.

(6) Mr. V.G. Tamaskar, learned counsel for the petitioner next submitted that although several items of goods are supplied to the South Eastern Coalfields Limited/respondent No.2 within the State of Chhattisgarh, only drill rods have been picked and chosen by the impugned amendment to be included in Schedule III of the Act 1976 so as to make the same liable to entry tax @ 10% of the taxable quantum and therefore the impugned amendment is discriminatory and violative of Article 14 of the Constitution.

(7) Mr. N.K. Agrawal, learned Deputy Advocate General for the State, on the other hand, submitted that before the impugned amendment all goods other than the goods specified in Schedule I and II were included in Schedule III and were taxable @ 1% of the taxable quantum and, therefore, drill rod, which was not included in Schedule I and II of the Act 1976, was also liable to entry tax @ 1% of the taxable quantum, but by the impugned amendment the drill rod along with Cane Basket and P.V.C. Casing Pipe have been made liable to entry tax @ 10% of the taxable quantum and the impugned amendment was not violative of Article 14 of the Constitution.

(8) In the case of **M/s. East India Tobacco Co. Vs. State of Andhra Pradesh and another** reported in **AIR 1962 SC 1733**, the Supreme Court has held:

> "It is not in dispute that taxation laws must also pass the test of Art. 14. That has been laid down recently by this Court in Kunnathat Thatunni Moopil Nair Vs. State of Kerala, AIR 1961 SC 552. But in deciding whether a taxation law is discriminatory or not it is necessary to bear in mind that the State has a wide discretion in selecting the persons or objects it will tax, and that a statute is not open to attack on the ground that it taxes some persons on objects and not others. It is only when within the range of its selection, the law operates unequally and that cannot be justified on the basis of any valid classification, that it would violative of Art.14. The

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following statement of the law in Willis on "Constitutional Law" page 587, would correctly represent the position with reference to taxing statutes under our Constitution:-

"A State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably .....The Supreme Court has been practical and has permitted a very wide latitude in classification for taxation".

(9) Hence, it was open to the State legislature of the State of Chhattisgarh to choose Cane Basket, Drill Rod, P.V.C. Casing Pipe for levying of higher rate of tax @ 10% of the taxable quantum and the fact that the legislature has not subjected the other goods supplied to the South Eastern Coalfields Limited within the State of Chhattisgarh to entry tax @ 10% on the taxable quantum is no ground to hold that the impugned amendment is discriminatory or violative of Article 14 of the Constitution of India. The drill rod has been treated as a class of goods for levying entry tax @ 10% of the taxable quantum. Hence, entry of drill rods by whomsoever into the local area is liable to tax @ 10% on the taxable quantum without any discrimination. The impugned amendment cannot, therefore, be struck down as discriminatory and violative of Article 14 of the Constitution of India.

(10) No other contention having been raised before us by Mr. V.G. Tamaskar, learned counsel for the petitioner, we hold that this writ petition has no merit and is liable to be dismissed and accordingly we dismiss the same. Considering, however, the facts of the case, the parties shall bear their own costs.

Sd/-
Chief Justice

Sd/-
V.K. Shrivastava
Judge

Subbu*